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Paper No. 4

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**SEP 28 2001**

**OFFICE OF PETITIONS**

In re Application of	:
Huitt, Bauman, Gubitose, and	:
Wieslaw	:
Application No. 09/917,183	: DECISION REFUSING STATUS
Filed: 27 July, 2001	: UNDER 37 CFR 1.47(a)
Attorney Docket No.	:

This is in response to the petition filed under 37 CFR 1.47(a)<sup>1</sup> on 27 July, 2001.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

**FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.**  
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 27 July, 2001, with a declaration naming Bruce Huitt, Kenneth Bauman, Christopher Gubitose, and Mroz Wieslaw as joint inventors and signed by joint inventor Gubitose on behalf of himself and the other joint inventors. The present petition was also filed, in which petitioners assert that joint inventors Huitt and Bauman are unavailable to sign the declaration.

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<sup>1</sup>A petition under 37 CFR 1.47(b) is inappropriate in this instance since one of the inventors has signed the declaration. A petition under 37 CFR 1.47(b) is only appropriate where none of the inventors will sign. Accordingly, the petition will be treated as a petition under 37 CFR 1.47(a).

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (3). Patent and trademark fees and charges payable to the Patent and Trademark Office are required to be paid in advance, that is, at the time of requesting any action by the Office for which a fee or charge is payable.<sup>2</sup> As such, the petition fee is a prerequisite to the filing of the present petition, and the Office will not reach the merits of the petition unless and until the petition fee is submitted. Any request for reconsideration of this petition must be accompanied by the petition fee.

Further correspondence with respect to this matter should be addressed as follows:

By mail:           Assistant Commissioner for Patents  
                    Box DAC  
                    Washington, D.C. 20231


By FAX:           (703) 308-6916  
                    Attn: Office of Petitions

By hand:           Crystal Plaza Four, Suite 3C23  
                    2201 S. Clark Place  
                    Arlington, VA

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<sup>2</sup>37 CFR 1.22(a).

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.



Douglas I. Wood  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy